

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH P. GIASI

Appeal No. 2004-1359
Application No. 09/875,831

ON BRIEF

Before GARRIS, OWENS and JEFFREY T. SMITH, *Administrative Patent Judges*.
JEFFREY T. SMITH, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicant appeals the decision of the Primary Examiner finally rejecting claim 3, the sole pending claim. We have jurisdiction under 35 U.S.C. § 134.¹

¹ In rendering this decision, we have considered Appellant's arguments presented in the Brief filed August 19, 2002 and the Reply Brief filed October 22, 2002.

BACKGROUND

Appellant's invention relates to a pallet platform. The scope of Appellant's invention can be ascertained from claim 3 which is reproduced from the Brief below:

3. In combination, a pallet and at least two pairs of a cooperating spaced apart foot arrangement attached in depending relation from each said pallet,

A. said each pallet comprising

(1) at least two strips forming a pallet body of cardboard construction material,

(2) a select number of circular shapes of said cardboard construction material removed to present an edge bounding a circular opening in said pallet body at each said site of said removal, and

B. said each foot in each said arrangement comprising

(1) a strip of cardboard corrugated construction material approximately one eighth inch in width wound in a select number of helical turns adhesively secured to each other into said cylindrical shape,

(2) a surface on an innermost helical turn bounding a hollow core of a selected diameter,

(3) a select number of helical turns selected to provide a diameter size of said foot as measured by said diameter of said hollow core and one eighth inch multiples of said helical turns to contribute to establishing surface contact at an interface of said end of said foot and said edge bounding said pallet circular opening, and

(4) an adhesive at the interface of said end of each pallet foot and said each circular opening edge to contribute to holding each said pallet strip in assembled condition during use.

CITED PRIOR ART

As evidence of unpatentability, the Examiner relies on the following references:

Frase	2,738,153	Mar. 13, 1956
Giasi	5,567,263	Oct. 22, 1996

THE REJECTION

The Examiner rejected claim 3 under 35 U.S.C. § 103(a) as obvious over the combination of Frase and Giasi. (Answer, p. 3).

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the Examiner and Appellant in support of their respective positions. This review leads us to conclude that the Examiner's § 103 rejection is well founded. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1471-1472, 223 USPQ 785, 787-788 (Fed. Cir. 1984). We affirm primarily for the reasons advanced by the Examiner and add the following primarily for emphasis.

DISCUSSION

The Examiner has found that Frase discloses a pallet containing supporting posts that are made from helical turns of corrugated board adhesively secured forming a hollow core. (Answer, p. 3). Frase discloses that the supporting posts are sized to be equal to the

width of the pallet's grill structure and positioned to distribute the load along the grill strips. (Col. 2, ll. 13-29). Frase also discloses that the pallet structure can be shipped disassembled. (Col. 2, ll. 29-32). The Examiner found that Giasi discloses a pallet that contains supporting means that are adhesively attached to the pallet through cutouts. (Answer, p. 3). Giasi discloses a pallet structure that is formed from at least two strips forming a pallet body of cardboard construction material. One of the strips of the pallet body comprises circular cutout openings that are sized to seat the supporting posts, i.e., cardboard cores. (Col. 2, ll. 31-42). Giasi discloses that the supporting post are adhesively attached to the pallet through the cutout openings. Giasi also discloses that the pallet structure can be shipped disassembled. (Col. 3, ll. 1-23). The Examiner concluded that it would have been obvious to use the helical turns of corrugated board supporting post described by Frase in a pallet containing cutout openings to seat the supporting post. (Answer, p. 3).

Appellant argues that both Frase and Giasi adhesively attach the end of the supporting post to the pallet and not the side of the foot adjacent to the end of the supporting post.² (Response, p. 3).

² Appellant's arguments in rebuttal to the Examiner's rejection have been presented in the Brief, Reply Brief and the reply to an office action filed March 5, 2002.

The Examiner asserts that it would have been obvious to a person of ordinary skill in the art to locate the adhesive in and around the opening that receives the supporting post. (Answer, p. 4).

We agree with the Examiner that a person of ordinary skill in the art would recognize that the adhesive should be placed in the appropriate locations to adhere the supporting post to the pallet. A person of ordinary skill in the art would have reasonably expected that the use of an adhesive on the side of the foot adjacent to the end of the supporting post would aid in the adhesive bonding of the supporting post to the pallet frame.

Appellant argues that subparagraph 3 of the claim specifies that the foot diameter is readily adjustable. (Response, p. 4).

This argument is not persuasive because the argument is not limited to the scope of the claimed invention. The identified portion of the claim specifies that the supporting foot comprises “a select number of helical turns selected to provide a diameter size of said foot as measured by said diameter of said hollow core and one eighth inch multiples of said helical turns to contribute to establishing surface contact at an interface of said end of said foot and said edge bounding said pallet circular opening”. In other words, the diameter of the supporting foot is determined by the size of the opening which receives the supporting foot. Giasi discloses that the supporting foot is placed, i.e., seated, within the circular

opening. A person of ordinary skill in the art would have recognized that the size of the supporting foot should not exceed the size of the circular opening.

Appellant argues that Frase does not understand “that each thickness of a helical turn contributes to sizing of the diameter of the foot, so that a correlation can be achieved between diameter size of the foot and an opening into which the foot can be positioned in its attachment to the pallet.” (Response, p. 4).

Appellant’s argument is not persuasive. As stated above, Frase discloses that the supporting posts are sized to be equal to the width of the pallet’s grill structure. Thus, contrary to Appellant’s argument, Frase does recognize that the sizing of the helical turn contributes to sizing of the diameter of the supporting foot.

Appellant argues that Frase teaches away from the seating of a supporting foot in a cutout. (Reply Brief, p. 2).

The argument is not persuasive because it does not address the rejection as presented by the Examiner. The Frase reference has not been cited for describing the cutout opening.

Based on our consideration of the totality of the record before us, having evaluated the *prima facie* case of obviousness in view of Appellant’s arguments, we conclude that the subject matter of claim 3 would have been obvious to a person of ordinary skill in the

Appeal No. 2004-1359
Application No. 09/875,831

art from the combined teachings of the cited prior art for the reasons stated above and in the Answer.

CONCLUSION

The Examiner rejection of claim 3 under 35 U.S.C. § 103(a) as obvious over the combined teachings of Frase and Giasi is affirmed.

Appeal No. 2004-1359
Application No. 09/875,831

Time for taking action

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED

BRADLEY R. GARRIS
Administrative Patent Judge

TERRY J. OWENS
Administrative Patent Judge

JEFFREY T. SMITH
Administrative Patent Judge

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Appeal No. 2004-1359
Application No. 09/875,831

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